

PUBLIC MEETING MINUTES

August 10, 2006

PUBLIC EMPLOYMENT RELATIONS BOARD
1031 18th Street
Sacramento, CA 95814

Chairman Duncan called the meeting to order at 10:05 a.m.

Members Present

John C. Duncan, Chairman
Lilian S. Shek, Member
Sally M. McKeag, Member
Karen L. Neuwald, Member

Staff Present

Robin Wesley, Acting General Counsel
Donn Ginoza, Administrative Law Judge
Eileen Potter, Chief Administrative Officer
Les Chisholm, Regional Director

Fred D'Orazio, Chief Administrative Law Judge (excused)

Call to Order

Chairman Duncan called the Board to order for the continuous open session of the June 8, 2006, Board meeting. He reported that the Board met in continuous closed session to deliberate on cases pending on the Board's docket.

Since that open session in June, the Board has issued PERB Decision Nos. 1847, 1848-S, Administrative Appeal Nos. Ad-354 and Ad-355-H. PERB denied the requests for injunctive relief in IR No. 503 (AFSCME Local 146 v. Carmichael Recreation & Park District) and IR No. 507 (Teamsters Local 542 v. County of Imperial). The requests for injunctive relief in IR No. 501 (San Francisco Municipal Attorneys Association v. City & County of San Francisco) and IR No. 505 (Fresno Teachers Association v. Fresno Unified School District) were withdrawn. PERB granted the request for injunctive relief in I.R. No. 506 (East Oakland Community Charter Teachers Association v. Education for Change. A PERB letter to parties regarding Court complaint not filed based on Education for Change's decision to cancel planned election.). A document containing a listing of the aforementioned decisions was made available at today's meeting.

Chairman Duncan announced that PERB General Counsel, Robert Thompson, will be retiring this year. Mr. Thompson served with distinction as a Regional Attorney, Legal Adviser, Deputy General Counsel, Acting General Counsel and General Counsel throughout his tenure with PERB. With 26 ½ years of working on the Board, Mr. Thompson's institutional knowledge played an integral part in the success of agency. On behalf of the Board, Chairman Duncan congratulated Mr. Thompson on his retirement and wished him well in his new ventures.

Chairman Duncan also announced that effective July 7, 2006, his Legal Adviser, Bilenda Harris-Ritter departed PERB and accepted an appointment as a Commissioner to the State Board of Parole Hearings. On behalf of the Board, Chairman Duncan thanked Ms. Harris-Ritter for her hard work and dedication to PERB and wished her well in her new appointment.

Motion: Motion by Member McKeag and seconded by Member Shek to close the June 8, 2006, public meeting.

Ayes: Duncan, Shek, McKeag, and Neuwald.

Motion Carried.

Chairman Duncan opened the meeting of August 10, 2006 and Member Shek led in the Pledge of Allegiance to the Flag.

Minutes

Motion: Motion by Member Neuwald and seconded by Member Shek that the Board adopt the minutes of the Public Meeting of PERB for June 8, 2006.

Ayes: Duncan, Shek, McKeag, and Neuwald.

Motion Carried.

Comments From Public Participants

Chairman Duncan acknowledged members of the public seeking to speak before the Board today regarding items not listed on the agenda. He cautioned the members of the public to please limit their comments to policies and procedures and not to any specific cases currently before the Board.

Dr. Ryan M. Anderson, PhD., postdoctoral fellow, University of California, San Francisco, expressed his concern on the following two issues: (1) the procedures governing the solicitation of union representation cards and (2) the verification of signature cards for verification of employee intent. His verbatim testimony is as follows:

Concerning the solicitation of signatures, I have many questions to which I have not been able to find sufficient answers.

1. Beyond prohibiting the use of force, threat, or other coercive tactics, what are the rules governing the solicitation of signatures from employees in the workplace? What, if any, rules govern the interpersonal interactions between the unrepresented employees, and the aspiring exclusive representative--specifically, in regards to union representatives providing false information about the use of cards in the unionization process.

2. What if any, is the requirement that an employee has a clear and demonstrated understanding of what signed representation cards themselves represent, and what they can be used for.

3. What are the penalties, if any, associated with solicitation in bad faith, or under false pretenses.

I would like to request a clarification of these issues, either here, or in writing. If any gaps in rules governing this process are found, I request that the board take action to generate new regulations.

Secondly, I would like to comment on the second issue: verification of employee signature cards and employee intent. My understanding is that under current rules there is no verification of the individual employee signatures on the representation cards. Rather, the process involves the comparison of two lists provided by the union and the employer. The unrepresented employees are left out the equation. When a number of cards representing employee intent are counted and found to be a majority, the union becomes the exclusive representative. Thus each card is a powerful document. Due to the nature of our very public profession, in which our names are easily accessible, that it is in the interest of employees to have some sort of validation/verification procedure in place to prohibit the abuse of our names.

As I understand it, until recently a secret ballot election was held in every case when greater than 30% of employees signed a valid card. This was a de facto verification of the employee intent represented by the cards. I would like to request that the board reconsider this or other similar procedures for verification of employee intent.

Dr. Wiebke Herzog, Ph.D., postdoctoral fellow, University of California, San Francisco addressed the Board regarding union representation. Her verbatim testimony is as follows:

1. The option to rescind a signature card. To date Postdoctoral fellows have been directed to the Union to address this issue, however for employees that fall under HEERA apparently there is no decision or law in place guaranteeing the right to rescind. Public employees under the MMBA do have this right. Additionally there is no timeline specified

for signature revocation. I would like to request the implementation of the option to rescind a signature from the Union any time during the year that card is valid. Furthermore specifically during the laboratory period PERB should recognize rescinding letters.

2. The option to intervene. As far as I understand, employees which [sic] fall under NLRB regulations do have the right to intervene with a request for recognition by filing a petition against the Union asking to be recognized. In this case the Petition [sic] is treated or recognized as a third party. Under PERB regulation only another recognized employee organization, but NOT the employee themselves can intervene. Can PERB instate those rights for public employees? And if that is the case I would like to ask the board to take action to do so.

Bruce Adams, Ph.D. postdoctoral fellow, University of California, San Francisco expressed his concerns regarding the following issues: 1) how employee units are defined and the subsequent procedures relating to that issue and 2) the clarity of PERB public postings to individual employees. His verbatim testimony is as follows:

I have concerns over the topic of ‘employee unit’ on the Request of Recognition Notice. The Notice implies there is only an opportunity for a subunit or group within a unit defined by the union seeking representation to select another union’s representation, but there is no option for that unit to exclude itself from the representation. I believe it is in a public employee’s best interest to have not only the choice of determining representation by the petitioning union, but also a different union, or no union representation. I believe this applies particularly to the exceptional case of postdoctoral, who are each specialists outside of their unit definition, and their unit definition does not reflect their expertise or the nature of their contractual agreement with their sponsors, but instead the mechanism by which they are paid. Additionally, UC campuses are recognized separately when ranked on standards and achievements professionally, however, there is no obvious way for individual employees to redefine the unit in the current Request of Recognition notice.

STATEMENT/ISSUE: CLARITY OF PERB PUBLIC POSTINGS TO INDIVIDUAL EMPLOYEES

We are grateful to PERB for fielding and responding to our information requests over the last few weeks. It was difficult, initially, to determine with whom I should talk as different issues arose during the last few weeks. I believe this is partly because of the required nonpartisan position of many public institutions, we feel that employees are not made aware of their rights/responsibilities/options based on the information in the Request of Recognition posting. There is no obvious or easily

accessible information. REQUEST: I request that PERB look into ways to better advertise avenue for gaining information on their Notices as well as strive to use clear, employee-friendly language in their postings.

CLOSING: Thank you for hearing our concerns today. We appreciate you are going to investigate these concerns. Although it may seem our issues are specific, they are relevant to protect the individual choices for representation by UC postdoctoral fellows, which is a diverse, largely international group of specialists.

Dr. Marianne Poxleitner, President, UC Berkeley Postdoctoral Association, representing 781 Berkeley postdoctoral fellows, stated it was her understanding that union representatives misrepresented themselves and their intentions, thus raising a concern to the manner in which signatures were attained on the signature cards by a union.

Dr. Gustavo Barisone, Postdoctoral Scholar Association, U.C. Davis, stated that the Davis campus and all other campuses in the U.C. system shared and agreed with the same concerns expressed by U.C. San Francisco and U.C. Berkeley members.

Chairman Duncan thanked the interested parties for their concerns and comments and proceeded to the staff reports.

Staff Reports

a. Administrative Report

Administrative Officer Eileen Potter reported that PERB submitted its fiscal year-end closing statements to the State Controller's Office on July 21, 2006. Paula Crouch, PERB Senior Accounting Officer is largely responsible for preparing the reports and has received numerous recognition awards from the State Controller's Office and the Department of Finance for her diligent accounting work. Ms. Crouch was also commended for her work in completing and submitting year-end reports on time for the 8th consecutive year.

PERB, along with the Department of Finance, will be utilizing the new automated on-line system established by the Governor's Office to work on schedules required for the Fiscal Year 2007- 2008 budget process.

b. Legal Report

Acting General Counsel Robin Wesley reported the litigation reports were distributed to the Board for their review. She reported for the month of July 2006, there were 58 unfair practice charges filed and 70 charges were processed by the General Counsel's Office. Ending this fiscal year, there was an upward trend in charges being filed totaling 1,012.

In the area of litigation, Ms. Wesley reported the NLRB issued decisions involving two California Charter Schools (the Leadership Public Schools and the Oakland Education for

Change). The NLRB made a determination that it did not have jurisdiction over these charter schools and PERB is currently processing petitions for recognition.

In the case International Association of Fire Fighters v. PERB, the trial court ruled in PERB's favor. PERB received notice from the union that it intends to appeal this matter to the Court of Appeal. PERB will prepare a response to the appeal at the appropriate time. In the case Contra Costa County v. Public Employees Union Local 1, PERB intervened and the trial court held that PERB did not have jurisdiction to determine whether a strike by specific employees performing essential functions was protected or prohibited. PERB is disputing the jurisdiction in that case and is preparing to file an appeal in the Court of Appeal.

Lastly, Ms. Wesley reported a petition for recognition has been filed by PRO/UAW seeking recognition as the exclusive representative for a unit of postdoctoral fellows at the University of California. PERB staff is currently investigating the petition and will make a determination on any issue in dispute.

In Chief Administrative Law Judge Fred D'Orazio's absence, Administrative Law Judge Donn Ginoza reported the July 2006 Administrative Law Division and Fiscal Year to date Report was distributed to the Board for their review. To date, there are 24 decisions to be written and 62 cases set for hearing. He reported that during Fiscal Year 2005- 2006, the administrative law judge staff issued 46 proposed decisions, keeping the average total decisions issued per year to the mid-40's. The number of proposed decisions last year appealed to the Board totaled 18, which represented 39 percent of all decisions issued. The number of decisions that went to hearing as contrasted to the number of total filings was 7 percent, which was slightly lower than the average trend for the relevant time.

c. Legislative Report

Regional Director Les Chisholm reported that due to the Legislature not being in session, the most recent Legislative Report to the Board for review is dated July 3, 2006. He reported that Senate Bill 1852 (annual clean-up of the codes), was approved in the Assembly and is now scheduled for the Senate consent calendar. Mr. Chisholm stated that prior to this meeting, the Board was advised of proposed amendments to Senate Bill 697 (Kuehl). This bill would provide child care providers with the right to formal representation, to enter into collective negotiations with public and private entities that administer public subsidy programs, and to meet and confer with regulatory agencies to discuss issues of mutual concern. Mr. Chisholm will keep the Board apprised of any bills affecting PERB's processes.

Motion: Motion by Member McKeag and seconded by Member Shek that the Administrative, Legal Reports (including General Counsel and Chief Administrative Law Judge) and Legislative Reports be received.

Ayes: Duncan, Shek, McKeag and Neuwald.

Motion Carried.

Old Business

None.

New Business

None.

General Discussion

Chairman Duncan announced that on September 21, 2006, there will be a PERB/CPER Conference in Sacramento entitled, "PERB: A Step by Step Analysis of the Process." He was pleased to report that PERB received a large attendance response from its constituents. Informational flyers for the PERB Conference were provided at today's meeting and interested parties were also encouraged to visit the PERB web site (www.perb.ca.gov) for additional information on the conference.

There being no further business, the meeting was recessed to continuous closed session.

The Board will meet in continuous closed session each business day beginning immediately upon the recess of the open portion of this meeting through October 12, 2006 when the Board will reconvene in Room 103, Headquarters Office of the Public Employment Relations Board. The purpose of these closed sessions will be to deliberate on cases listed on the Board's Docket (Gov. code sec. 11126(c)(3)), personnel (Gov. Code sec. 11126(a)), pending litigation (Gov. Code sec. 11126(e)(1)), and any pending requests for injunctive relief (Gov. Code sec. 11126(e)(2)(c)).

Motion: Motion by Member Neuwald and seconded by Member McKeag that there being no further business, the meeting be recessed to continuous closed session.

Ayes: Duncan, Shek, McKeag and Neuwald.

Motion Carried.

Respectfully submitted,

Chris Wong, Executive Assistant

APPROVED AT THE PUBLIC MEETING OF:

John C. Duncan, Chairman